

or is about to make the levy, exhibit such books or records to such officer.

(26 U.S.C. 6333)

§ 70.167 Authority to release levy and return property.

(a) *Release of levy*—(1) *Authority.* A regional director (compliance) or the Chief, Tax Processing Center may release the levy upon all or part of the property or rights to property levied upon as provided in paragraphs (a) (2), (3) and (4) of this section. Generally, the official who made the levy will receive and act on requests for release of a levy and return of property, but whenever necessary to protect the interests of the government, any regional director (compliance) or the Chief, Tax Processing Center may release a levy and return property seized by another ATF official. A levy may be released under paragraph (a)(3) of this section only if the delinquent taxpayer complies with such of the conditions thereunder as a regional director (compliance) or the Chief, Tax Processing Center may require and if the regional director (compliance) or the Chief, Tax Processing Center determines that such action will facilitate the collection of the liability. A release pursuant to paragraph (a)(4) of this section is considered to facilitate the collection of the liability. The release under this section shall not operate to prevent any subsequent levy.

(2) *Conditions for mandatory release.* (i) A regional director (compliance) or the Chief, Tax Processing Center shall release the levy as authorized under paragraph (a)(1) of this section, if any of the following conditions exist:

(A) The liability for which such levy was made is satisfied or becomes unenforceable by reason of lapse of time,

(B) Release of such levy will facilitate the collection of such liability,

(C) The taxpayer has entered into an agreement under 26 U.S.C. 6159 to satisfy such liability by means of installment payments, unless such agreement provides otherwise (a regional director (compliance) or the Chief, Tax Processing Center is not required to release the levy in this case if release of such levy would jeopardize the secured creditor status of the United States).

(D) A regional director (compliance) or the Chief, Tax Processing Center has determined that such levy is creating an economic hardship due to the financial condition of the taxpayer, or

(E) The fair market value of the property exceeds such liability and release of the levy on a part of such property could be made without hindering the collection of such liability.

(ii) In the case of any tangible personal property essential in carrying on the trade or business of the taxpayer, the regional director (compliance) or the Chief, Tax Processing Center shall provide for an expedited determination under paragraph (a)(2)(i) if levy on such tangible personal property would prevent the taxpayer from carrying on such trade or business.

(3) *Conditions for discretionary release.* A regional director (compliance) or the Chief, Tax Processing Center may release the levy as authorized under paragraph (a)(1) of this section, if:

(i) *Escrow arrangement.* The delinquent taxpayer offers a satisfactory arrangement, which is accepted by a regional director (compliance) or the Chief, Tax Processing Center, for placing property in escrow to secure the payment of the liability (including the expenses of levy) which is the basis of the levy.

(ii) *Bond.* The delinquent taxpayer delivers an acceptable bond to a regional director (compliance) or the Chief, Tax Processing Center conditioned upon the payment of the liability (including the expenses of levy) which is the basis of the levy. Such bond shall be in the form provided in 26 U.S.C. 7101 and § 70.281 of this part.

(iii) *Payment of amount of U.S. interest in the property.* There is paid to a regional director (compliance) or the Chief, Tax Processing Center an amount determined by ATF to be equal to the interest of the United States in the seized property or the part of the seized property to be released.

(iv) *Assignment of salaries and wages.* The delinquent taxpayer executes an agreement directing the taxpayer's employer to pay to a regional director (compliance) or the Chief, Tax Processing Center amounts deducted from the

employee's wages on a regular, continuing, or periodic basis, in such manner and in such amount as is agreed upon with a regional director (compliance) or the Chief, Tax Processing Center, until the full amount of the liability is satisfied, and such agreement is accepted by the employer.

(v) *Extension of statute of limitations.* The delinquent taxpayer executes an agreement to extend the statute of limitations in accordance with 26 U.S.C. 6502(a)(2) and § 70.224 of this part.

(4) *Release where value of interest of United States is insufficient to meet expenses of sale.* A regional director (compliance) may release the levy as authorized under paragraph (a)(1) of this section if that official determines that the value of the interest of the United States in the seized property, or in the part of the seized property to be released is insufficient to cover the expenses of the sale of such property.

(b) *Return of property*—(1) *General rule.* If a regional director (compliance) or the Chief, Tax Processing Center determines that property has been wrongfully levied upon, the regional director (compliance) or the Chief, Tax Processing Center may return:

- (i) The specific property levied upon,
- (ii) An amount of money equal to the amount of money levied upon (together with interest thereon at the overpayment rate from the date ATF receives the money to a date not more than 30 days before the date of return), or
- (iii) An amount of money equal to the amount of money received by the United States from a sale of the property (together with interest thereon at the overpayment rate from the date of the sale of the property to a date not more than 30 days before the date of return).

If the United States is in possession of specific property, the property may be returned at any time. An amount equal to the amount of money levied upon or received from a sale of the property may be returned at any time before the expiration of 9 months from the date of the levy. When a request described in paragraph (b)(2) of this section is filed for the return of property before the expiration of 9 months from the date of levy, an amount of money may be returned after a reasonable period of

time subsequent to the expiration of the 9-month period if necessary for the investigation and processing of such request. In cases where money is specifically identifiable, as in the case of a coin collection which may be worth substantially more than its face value, the money will be treated as specific property and, whenever possible, this specific property will be returned. For purposes of paragraph (b)(1)(iii) of this section, if property is declared purchased by the United States at a sale pursuant to 26 U.S.C. 6335(e), the United States is treated as having received an amount of money equal to the minimum price determined by the regional director (compliance) before the sale or, if larger, the amount received by the United States from the resale of the property.

(2) *Request for return of property.* A written request for the return of property wrongfully levied upon shall be addressed to the official who authorized the levy. The written request shall contain the following information:

- (i) The name and address of the person submitting the request,
- (ii) A detailed description of the property levied upon,
- (iii) A description of the claimant's basis for claiming an interest in the property levied upon, and
- (iv) The name and address of the taxpayer, the originating ATF office, and the date of lien or levy as shown on the Notice of Tax Lien, Notice of Levy, or, in lieu thereof, a statement of the reasons why such information cannot be furnished.

(3) *Inadequate request.* A request shall not be considered adequate unless it is a written request containing the information required by paragraph (b)(2) of this section. However, unless a notification is mailed by the official who received the request to the claimant within 30 days of receipt of the request to inform the claimant of the inadequacies, any written request shall be considered adequate. If the official who received the request timely notifies the claimant of the inadequacies of the request, the claimant shall have 30 days from the receipt of the notification of inadequacy to supply in writing any omitted information. Where the omitted information is so supplied within

the 30-day period, the request shall be considered to be adequate from the time the original request was made for purposes of determining the applicable period of limitation upon suit under 26 U.S.C. 6532(c).

(26 U.S.C. 6343)

§ 70.168 Redemption of property.

(a) *Before sale.* Any person whose property has been levied upon shall have the right to pay the amount due, together with costs and expenses of the proceeding, if any, to the regional director (compliance) at any time prior to the sale of the property. Upon such payment the regional director (compliance) shall restore such property to the owner and all further proceedings in connection with the levy on such property shall cease from the time of such payment.

(b) *Redemption of real estate after sale—(1) Period.* The owner of any real estate sold as provided in 26 U.S.C. 6335, the owner's heirs, executors, or administrators, or any person having any interest therein, or a lien thereon, or any person in their behalf, shall be permitted to redeem the property sold, or any particular tract of such property, at any time within 180 days after the sale thereof.

(2) *Price.* Such property or tract of property may be redeemed upon payment to the purchaser, or in case the purchaser cannot be found in the county in which the property to be redeemed is situated, then to the regional director (compliance) for the ATF region in which the property is situated, for the use of the purchaser, the purchaser's heirs, or assigns, the amount paid by such purchaser and interest thereon at the rate of 20 percent per annum. In case real and personal property (or several tracts of real property) are purchased in the aggregate, the redemption price of the real property (or of each of the several tracts) shall be determined on the basis of the ratio, as of the time of sale, of the value of the real property (or tract) to the value of the total property purchased. For this purpose the minimum price or the highest bid price, whichever is higher, offered for the property separately or in groups shall be treated as the value.

(c) *Record.* When any real property is redeemed, the regional director (compliance) shall cause entry of the fact to be made upon the record of sale kept in accordance with 26 U.S.C. 6340 and § 70.187 of this part, and such entry shall be evidence of such redemption. The party who redeems the property shall notify the regional director (compliance) of the ATF region in which the property is situated of the date of such redemption and of the transfer of the certificate of sale, the amount of the redemption price, and the name of the party to whom such redemption price was paid.

(26 U.S.C. 6337)

§ 70.169 Expense of levy and sale.

The regional director (compliance) shall determine the expenses to be allowed in all cases of levy and sale. Such expenses shall include the expenses of protection and preservation of the property during the period subsequent to the levy, as well as the actual expenses incurred in connection with the sale thereof. In case real and personal property (or several tracts of real property) are sold in the aggregate, the regional director (compliance) shall properly apportion the expenses to the real property (or to each tract).

(26 U.S.C. 6341)

§ 70.170 Application of proceeds of levy.

(a) *Collection of liability.* Any money realized by proceedings under 26 U.S.C. 6331 through 6344, or by sale of property redeemed by the United States (if the interest of the United States in the property was a lien arising under the provisions of 26 U.S.C. enforced and administered by the Bureau), is applied in the manner specified in paragraphs (a)(1), (2), and (3) of this section. Money realized by proceedings under 26 U.S.C. 6331 through 6344, includes money realized by seizure, by sale of seized property, or by surrender under 26 U.S.C. 6332 except money realized by the imposition of a 50 percent penalty pursuant to 26 U.S.C. 6332(d)(2)).

(1) *Expense of levy and sale.* First, against the expenses of the proceedings or sale, including expenses allowable